



FILE COPY

**SUPREME COURT OF THE UNITED STATES.**

OCTOBER TERM, 1940.

No. 990.

THE UNITED STATES,

PETITIONER,

v.

NUNNALLY INVESTMENT COMPANY.

On Petition for a Writ of Certiorari to the  
Court of Claims.

**BRIEF IN OPPOSITION TO PETITION  
FOR REHEARING.**

GRANGER HANSELL,

W. A. SUTHERLAND,

*Counsel for Respondent.*



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## BRIEF IN OPPOSITION TO PETITION FOR REHEARING.

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The petition for rehearing herein presents no new argument. The case of *United States v. Kales*, No. 35, 1941 Term, solely relied upon as a basis for rehearing, was cited and relied upon in the petition for certiorari (p. 14), and was no doubt considered by this Court in denying certiorari in the present case four weeks after certiorari was granted in the *Kales* case.

The *Kales* case is in no way similar to the present case. The main question there involved—and no doubt the only question considered by this Court in granting certiorari—relates to the sufficiency of the claim for refund. The question whether Mrs. Kales was foreclosed by a prior suit against a Collector of Internal Revenue—the only question which could be suggested as remotely related to the present case—was so little relied upon by the United States in the Circuit Court of Appeals that the point was not even mentioned in the Government's brief or in its petition for rehearing. It is therefore doubtful whether this Court would feel that the point is properly raised on certiorari, even if it were meritorious—which it clearly is not.

Whichever way the *Sage* case or the present case had been decided, it is clear that the recovery by Mrs. Kales from one Collector of the income taxes paid to that Collector could not conceivably bar her from maintaining a suit against a second Collector or the United States for the recovery of income taxes paid to that second Collector. The situation in the *Kales* case is entirely different from that presented in the *Sage* case and the present case, in that Mrs. Kales could not possibly have recovered, in the suit against the first Collector, any part of the sum paid to the second Collector.

With respect to the present case, the Respondent's brief in opposition contains a complete discussion of the reasons why certiorari should not be granted.

Respectfully submitted,

GRANGER HANSELL,

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